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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195961
Party	Plaintiff ELVH, Inc.
Correspondence Address	JEFFREY R COHEN MILLEN WHITE ZELANO & BRANIGAN PC 2200 CLARENDON BLVD, SUITE 1400 ARLINGTON, VA 22201 UNITED STATES docketing@mwzb.com,cohen@mwzb.com, mandell@mwzb.com
Submission	Opposition/Response to Motion
Filer's Name	Michael Culver
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Signature	/michaelculver/
Date	08/14/2012
Attachments	opposer's response to motion to compel.pdf (7 pages)(278982 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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	}	
	}	Application Ser. Nos. 77919644
ELVH, INC.	}	and 77919645
	}	Marks: KELLYVANHALEN
	}	
Opposer,	}	
	}	
v.	}	Opposition No. 91195961
	}	
KELLY VAN HALEN	}	
	}	
	}	
Applicant.	}	

**OPPOSER'S MEMORANDUM IN OPPOSITION TO
APPLICANT'S MOTION TO COMPEL**

Opposer, ELVH, Inc., submits this memorandum in opposition to Applicant's Motion to Compel. Applicant's interrogatories (Exhibit A to her motion) clearly exceed the limit of 75 imposed by 37 CFR § 2.120(d)(1).

The excessive number can be shown in two ways: First, by Interrogatory No. 37 alone; and, second, by the remaining interrogatories. No. 37 has the following three subparts:

“(a) state all facts upon which you base your response;

(b) state the name, address and telephone numbers of each person who has knowledge of those facts; and

(c) identify all Documents that support Your response.”

Those three subparts are directed to Applicant's First Set of Requests for Admissions (Exhibit C to Applicant's motion) which total 38 requests. As explained in the Board's procedures, TBMP 405.03(d), Applicant is bound by the numbering system of three

subparts. Further, that three part system is directed to a total of 38 admission requests, regardless of whether the request is ultimately denied or admitted. The Board makes this clear by referring to the example of an interrogatory with an initial question and a follow-up question to be answered only if the initial question is in the affirmative—that style of interrogatory is counted as separate interrogatories. By that reasoning, an interrogatory directed to an admission request, regardless of whether the request is admitted or denied, counts as a separate interrogatory. Here, that separate interrogatory is directed to 38 admission requests, hence there are 38 separate interrogatories each having three subparts for a total of 114 interrogatories.

The foregoing is sufficient proof of excessive interrogatories, and thus reason to deny Applicant's motion. A second example of excessive interrogatories is also found in the text of interrogatories nos. 1 to 36 (that is, all but the one multipart interrogatory discussed above). Under the Board's procedures, information concerning, for example, "adoption and use" of a mark are separate issues and thus separate interrogatories. Listed below are the gist of the issues raised in each of interrogatory nos. 1-36 and Opposer's calculation of the number of subparts.

1. adoption and use of the mark, with detailed specification of goods and the time periods of use: 4 total subparts.
2. describe the goods, quantity sold annually, and annual gross revenue: 3 total subparts.
3. annual amounts expended for marketing, adverting, and promoting: 1 subpart.
4. marketing and promotional efforts, marketing and promotional channels, describe every advertisement and printed material: 3 total subparts.

5. identify persons who prepare advertisements, persons who perform public relations, and persons who have consulted: 3 total subparts.
6. identify all persons who have sold goods: 1 subpart
7. identify customers and describe degree of care: 2 subparts.
8. location of each place where goods offered and dates for such location: 2 subparts.
9. state date and describe circumstances: 2 subparts.
10. first part ("If you contend that") followed by identification of all facts, documents and persons and a calculation of damages: 5 subparts.
11. first part ("If you contend that") followed by identification of all facts, documents and persons: 4 subparts.
12. first part ("If you contend that") followed by identification of all facts, documents and persons: 4 subparts.
13. first part ("If you contend that") followed by identification of all facts, documents and persons: 4 subparts.
14. describe each inquiry: 1 subpart.
15. first part ("If you contend that") followed by identification of all facts, documents and persons: 4 subparts.
16. first part ("If you contend that") followed by identification of all facts, documents and persons: 4 subparts.
17. identify all knowledgeable persons and describe the basis for the knowledge: 2 subparts.

18. if a survey has been conducted, describe it and all participating persons: 3 subparts.
19. identify each expert witness and the basis of the knowledge: 2 subparts.
20. identify relevant persons and describe actions taken: 2 subparts.
21. describe any other legal proceedings: 1 subpart.
22. describe specific items sold as of a date: 1 subpart.
23. describe specific items sold as of a date: 1 subpart.
24. describe specific items sold as of a date: 1 subpart.
25. describe specific services sold as of a date: 1 subpart.
26. describe specific services sold as of a date: 1 subpart.
27. state the target market for the goods/services for interrogatories nos. 2 and 22-26: 6 subparts.
28. state the price range for the goods/services for interrogatories nos. 2 and 22-26: 6 subparts.
29. describe a particular person's involvement: 1 subpart.
30. describe a particular person's involvement: 1 subpart.
31. describe a particular person's involvement: 1 subpart.
32. describe a particular person's involvement: 1 subpart.
33. describe a particular person's involvement: 1 subpart.
34. statement regarding a particular person's involvement: 1 subpart.
35. statement regarding a particular person's involvement: 1 subpart.
36. statement regarding a particular person's involvement: 1 subpart.

The foregoing total 82 subparts. This determination was clearly evident using the Board's procedures stated in TBMP 405.03(d). On June 20, 2012—before the general objection was finalized—Opposer offered to Applicant the option of having Opposer respond to interrogatories nos. 1-36 (i.e., 82 subparts) if Applicant would only drop interrogatory no. 37 (i.e., 114 subparts). The email between the parties' counsel regarding this compromise is attached as Exhibit 1. Applicant did not accept this compromise. After several months of delay for this motion to be resolved, Applicant may be back in the same position as on June 20 if the Board grants Applicant leave to re-serve the first portion of the interrogatories (presumably Applicant will trim the 82 subparts down to the limit).

Based on all of the foregoing, Applicant's motion to compel should be denied.

Date: August 14, 2012

By: Michael Culver
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Certificate of Service

This is to certify that a copy of the foregoing was served this 14th day of August 2012 by first-class mail, postage prepaid, on the following as Applicant's attorney of record:

Don Thornburgh, Esquire
DON THORNBURGH LAW CORPORATION
466 FOOTHILL BLVD # 220
LA CANADA FLINTRIDGE, CA 91011-3518

By: Michael Culver
Attorney for Opposer

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OPPOSER'S MEMORANDUM IN OPPOSITION TO
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Exhibit 1

Michael Culver

From: Jeff Cohen
Sent: Wednesday, June 20, 2012 3:59 PM
To: 'Don (mail@donthornburgh.com)'
Cc: Michael Culver
Subject: Interrogatories

Your last Rog #37 and its request combined with the total Rogs added to the admissions takes you well over 75 – plenty of subparts in your Rogs and 37 has 3 parts itself -- you have a choice to either confirm to me that you drop the last Rog #37 or you force me to not respond by entering a general objection as to the amount of Rogs.

Please provide your answer today.

Jeffrey. R. Cohen
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Arlington, VA 22201
703 243-6333
fax 703 243-6410

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Thank you.